

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 23, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:09KD-127

Kauai

Grant of Perpetual, Non-Exclusive Easement to Kauai Island Utility Cooperative and Hawaiian Telcom Inc. for Utility Purposes; Issuance of a Right-of-Entry to the Department of Transportation, Highways Division for Construction, Staging and Work Area Purposes; Cancellation of Revocable Permit No. S-7444, Issuance of a Revocable Permit to the Department of Transportation, Highways Division for Field Office, Staging and Work Area Purposes, Kawaihau, Kauai, Tax Map Key:(4) 4-1-3:portion of 44, 17 and 4-1-4:portion of 21, 22, 24.

APPLICANT:

Department of Transportation-Highway Division on behalf of Kauai Island Utility Cooperative (KIUC), whose mailing address is 4463 Pahee Street Suite 1, Lihue, Hawaii 96766-2000 and Hawaiian Telcom Inc. whose mailing address is Box 2200, Honolulu, Hawaii 96841.

Department of Transportation-Highway Division, whose mailing address is 601 Kamokila Boulevard, Kapolei, Hawaii 96707

LEGAL REFERENCE:

Section 171-13, 55, 95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Wailua situated at Wailua, Kawaihau, Kauai, identified by Tax Map Key: (4) 4-1-3:portion of 44, 17 and 4-1-4:portion of 21, 22, 24, as shown on the attached map labeled Exhibit A and B.

AREA:

Easement 3 = 2022 square feet, more or less.

Easement 4 = 7445 square feet, more or less.

Easement 5 = 435 square feet, more or less.

Construction Parcel 1 = 1,521 square feet, more or less

Construction Parcel 2A = 480 square feet, more or less

Construction Parcel 4 (Rev.1) = 13,004 square feet, more or less

Revocable Permit Area = 37,244 square feet, more or less

ZONING:

Tmk: (4) 4-1-3:17	State Land Use District: County of Kauai CZO:	Urban Open
Tmk: (4) 4-1-3:44	State Land Use District: County of Kauai CZO: Neighborhood	Urban Commercial
Tmk: (4) 4-1-4:22	State Land Use District: County of Kauai CZO: Family Residential	Urban Improved Single
Tmk: (4) 4-1-4:21	State Land Use District: County of Kauai CZO:	Urban Apartment
Tmk: (4) 4-1-4:24	State Land Use District: County of Kauai CZO: Family Residential	Urban Improved Single

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Tmk: (4) 4-1-03:17

Encumbered by Revocable Permit No. S-7444, Coco Palms Ventures LLC, Permittee, for parking and landscaping purposes.

Encumbered by Deed bearing Land Office Deed S-12850, Coco Palms Ventures LLC, Grantee, easement for road right-of-way, 25 feet wide. The Board at its meeting held on August 28, 2009(D-3), approved the cancellation of the easement.

Tmk: (4) 4-1-03:44

Encumbered by Governor's Executive Order No. S-2744, County of Kauai for Wailua sewage pump station and emergency power generator site purposes.

Encumbered Grant of Easement No. S-4244, Coco Palms Ventures LLC, Grantee, for sewer easements Part 1 & 2. Easement to expire on May 12, 2034.

Tmk: (4) 4-1-4:22

Unencumbered

Tmk: (4) 4-1-4:21

Encumbered by General lease No. S-3941, Smiths's Motorboat Service, Inc., Lessee, for rehabilitation of the disabled and handicapped and related activities. Lease to expire on November 15, 2020.

Tmk: (4) 4-1-4:24

Encumbered by Governor's Executive order No. 1771, Department of Land & Natural Resources, Division of State Parks for territory park system (Wailua).

Encumbered by Grant of Easement bearing Land Office Deed No. S-26124, County of Kauai, Grantee, to operate, use and maintain a drainage system in connection with the Wailua Drainage Canal, together with the right of ingress and egress for said purposes.

CHARACTER OF USE:

For Easement 3, 4, 5: Right, privilege and authority to construct, use, maintain, repair, replace and remove telecommunication and electrical transmission lines, poles, guy wires and anchors over, under and across State-owned land.

For Construction Parcels 1, 2A, and 4 (Rev.1): Staging and work areas.

For Revocable Permit Area: Field office, staging and work area.

EASEMENT COMMENCEMENT DATE:

To be determined by the Chairperson.

EASEMENT CONSIDERATION:

Gratis. Department of Transportation is requesting the consideration be gratis because they have to move (relocate) the existing lines in Kuhio Highway in accommodate their highway widening project: NH-056-1(50).

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on September 22, 2009 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

Kauai Island Utility Cooperative

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

Hawaiian Telcom Inc.

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

APPLICANT REQUIREMENTS:

Department of Transportation, Highways Division shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 2) Department of Transportation, Highway Division is required to obtain concurrence from County of Kauai.

REMARKS:

Department of Transportation's (DOT) widening of Kuhio Highway Project NH-056-1 (50) has made it necessary to relocate KIUC and Hawaiian Telcom's lines from Kuhio Highway and into State properties identified as Parcels 44 and 17. Some of the lines will be relocated into Parcel 39. Previously, the Land Board at its meeting of February 10, 2006 (D-3), approved of and recommended to the Governor, setting aside Parcel 39 to DOT for roadway purposes. There is a major traffic flow problem traveling westbound on Kuhio Highway beginning at the Kapaa Bypass Road intersection to the Wailua River Bridge. It was suggested that an additional travel lane and increasing the width of the existing Wailua

Bridge, could improve the westbound traffic flow. The State property (Parcel 39) is approximately 18 feet wide and was believed to be able to accommodate an additional lane and improvements. At this time, the set aside has not been completed.

DOT is requesting the easement consideration be gratis because they have to move (relocate) the existing lines (of KIUC and Hawaiian Telcom) in Kuhio Highway as part of this highway widening project: NH-056-1(50).

Additionally, DOT plans to improve Kuamoo Road by constructing a culvert extension, storage lane within the right-of-way of Kuamoo road, and a sloped bank adjacent to the paved storage lane and the Wailua River State Park. These areas are under the jurisdiction of the Division of State Parks. Wailua River State Park is a 6(f) protected property under the Land and Water Conservation Fund (LWCF) Program. Therefore, DOT has entered into an agreement with DLNR for the monitoring and maintenance of the 50-foot wide slope for a period of one year. Exhibit C.

Comments were solicited from:

Div of Aquatic Resources	No response
Dept of Health	No response
County Dept of Planning	No response
County Dept of Public Works	No response
Commission on Water Resource Management	No objections or comments
Historic Preservation	No historic properties will be affected because residential development/urban has altered the land.
Office of Hawaiian Affairs	Exhibit D
County Dept of Water	DOW has existing water mains along Kuamoo Road adjacent to the Parcels 21, 22 and 24. Any new request for water service will be dependent on the adequacy of the source, storage and transmission facilities existing at the time.

We have included DOT's response to OHA's questions as Exhibit E.

DOT is requesting a construction right-of-entry because of the strict timelines in place for this project. Additionally, 3 separate areas are needed by DOT for their staff and contractors, to be used as staging and work areas. Construction Parcel 1 is unencumbered. Construction Parcel 2A is located within Smith's Motorboat Service lease. Permission has been obtained. Construction Parcel 4 (Rev.1) is located within Wailua River State Park. Permission has been obtained.

The requested area for the revocable permit is larger and can best accommodate this DOT project. DOT staff and contractors will use this property as a field office, staging and work area. DOT is requesting the monthly rent be gratis because this project is to improve traffic flow on Kuhio Highway beginning at the Kapaa Bypass Road intersection to the Wailua River Bridge.

Currently, the tenant is not utilizing Parcel 17 since the adjacent hotel renovation project (located on private property) stopped in 2008. Furthermore, we understand Coco Palms Ventures LLC has placed their hotel property on the market. If Land Board approval is obtained, staff will be terminating Revocable Permit No. S-7444.

As background, the Land Board at its meeting of August 28, 2009 (D-3), approved Coco Palms Ventures LLC request for a 10-year, term, non-exclusive access easement. There should be no conflict on the use of Parcel 17. Coco Palms Ventures LLC has other entry points. Staff can coordinate with the parties, if Coco Palms Ventures LLC consultants need to enter Parcel 17 to mark the easement alignment. In conclusion, staff believes the DOT project is important to Kauai residents and its economy. The proposed use is temporary. The State property will be returned to the Department in better condition than what it is currently in.

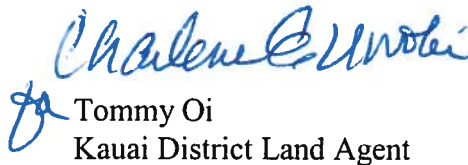
RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to Kauai Island Utility Cooperative and Hawaiian Telcom Inc. covering the subject area for utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a right-of-entry permit to the Department of Transportation, Highway Division for construction, staging and work area purposes, as cited above, which are by this reference incorporated herein and further subject to the following:
 1. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
 2. Such other terms and conditions as may be prescribed by the Chairperson

to best serve the interests of the State.

3. Authorize the termination of Revocable Permit No. S-7444.
4. Authorize the issuance of a revocable permit to Department of Transportation, Highways Division covering the subject area for field office, staging and work area purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Tommy Oi
Kauai District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson





LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 24, 2009

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM:

TO: Brennon T. Morioka, Director
Department of Transportation

FROM: Laura H. Thielen, Chairperson

A handwritten signature in black ink, appearing to be "LH Thielen", is written over the name in the "FROM" line.

SUBJECT: One-Year Agreement for the 50-foot Wide Slope Adjacent to Kuamo'o Road,
Kaumuali'i Section, Wailua River State Park, Kaua'i TMK: (4) 4-1-04: 24

The Department of Land and Natural Resources, Division of State Parks has agreed to improvements along Kuamo'o Road by the Department of Transportation (DOT) that will affect a portion of the Kaumuali'i Section of Wailua River State Park. The DOT proposes to construct a storage lane within the right-of-way (ROW) of Kuamo'o Road and the portion of the park adjacent to the ROW will be used to construct a sloped bank adjacent to the paved storage lane (Attachments 1 and 2).

Wailua River State Park is a 6(f) protected property under the Land and Water Conservation Fund (LWCF) Program. The LWCF federal funds for outdoor recreation were used to construct various improvements within Wailua River State Park in the 1970s. The terms of the program require that 6(f) park lands be retained in outdoor recreation and the construction of a new roadway slope adjacent to Kuamo'o Road and within the park was reviewed by State Parks and the National Park Service for compliance with the LWCF requirements. An easement to DOT was considered but the National Park Service determined that this "taking" of parkland for roadway purposes would result in a conversion where DOT would need to provide alternative park land. Therefore, it has been agreed between our agencies that a gradual, 50-foot wide sloping bank will be constructed from the paved road surface to the lower park grounds. To construct this slope, 16 coconut trees will be removed within the historic coconut grove. It has been determined that several of these trees are nearing 100 years of age and need to be replaced for public health and safety reasons. As part of this project, DOT has agreed to replace the coconut trees and repave the entry road to the park adjacent to Kuamo'o Road.

To address the alteration of the ground surface and landscaping in the park for the improvements to Kuamo'o Road, we are requesting that DOT commit to the monitoring and maintenance of the 50-foot wide slope for a period of one year. This timeframe will allow us to evaluate any structural deficiencies in the construction of the slope. DOT will monitor the viability of the replacement coconut trees for a 9-month period. More specifically, this agreement between DLNR and DOT requires that DOT commit to the following:


EXHIBIT "C"

Mr. Brennon Morioka
August 24, 2009
Page 2

1. For a period of one year from the completion of construction, DOT will repair any damage and correct any deficiencies within the 50-foot wide slope, as well as the adjacent park grounds, that may be caused by the settling or erosion of the constructed slope, run-off from the roadway and culvert, or any other structural deficiency.
2. For a period of 9 months from the time of planting, DOT will maintain the 16 replacement coconut trees planted in the 50-foot wide slope and insure that the trees are healthy and viable.
3. For a period of 9 months from the time of planting, DOT will replace any of the 16 coconut trees that show signs of disease, decay, or other problems that threaten their health and viability.
4. For a period of 9 months from the time of planting, DOT will maintain the grass lawn within the 50-foot wide slope to insure that the grass is established and there are no threats of soil erosion.

As required with the transfer of a 0.859-acre area at the Hikinaakala Section of Wailua River State Park to DOT for the expansion of the canehaul bridge and construction of the pedestrian/bike path, DOT will become a co-sponsor on the LWCF project agreements for Wailua River State Park. As a co-sponsor, DOT agrees that the 50-foot wide slope area of Kaumuali'i Section of Wailua River State Park will be retained as a viable park site for outdoor recreation.

By our signatures below, we commit on behalf of our respective agencies to the actions stated above and will comply with all the terms and requirements of the LWCF Program as they apply to the Kaumuali'i Section of Wailua River State Park.



LAURA H. THIELEN, Chairperson
Department of Land and Natural Resources

Date

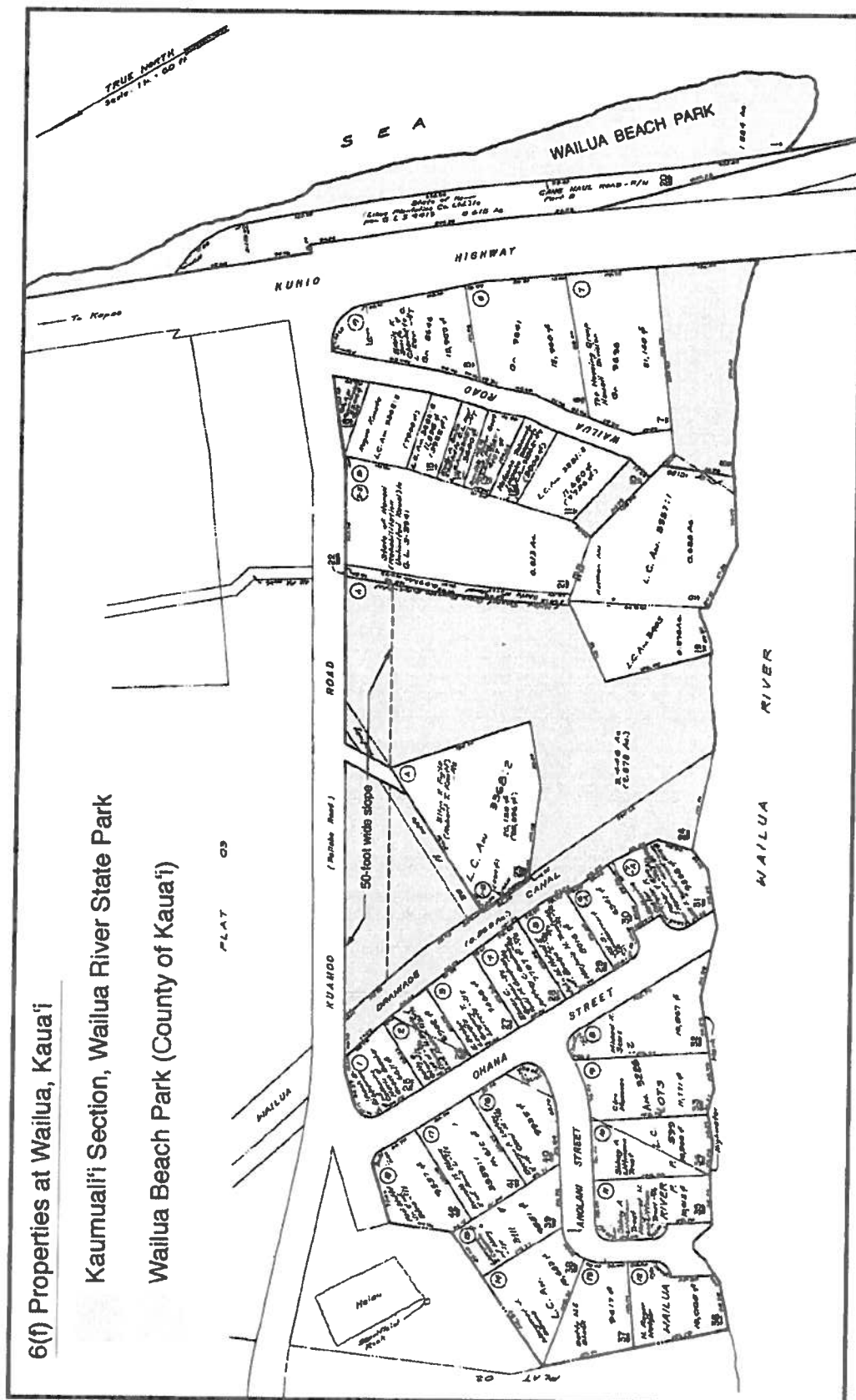


BRENNON MORIOKA, Director
Department of Transportation

Date

EXHIBIT "C"

Kaumuali'i Section, Wailua River State Park
Wailua Beach Park (County of Kauai)



ATTACHMENT 1

EXHIBIT "C"

PHONE (808) 594-1888

FAX (808) 594-1865



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813**

HRD07/3254

November 30, 2007

Tommy Oi, Land Agent
Department of Land and Natural Resources
3060 Eiwa Street, Room 205A
Līhu'e, Kaua'i, Hawai'i 96766

**RE: Request for Issuance of Slope Easement to State of Hawai'i and
Construction Right-of-Entry Permit, Wailua, Kaua'i, TMKs: 4-1-004:
21, 22 and 24.**

Dear Mr. Oi,

The Office of Hawaiian Affairs (OHA) is in receipt of your request for written comments regarding a request for issuance of a slope easement to the State and a construction right-of-entry permit in Wailua on Kaua'i. We have the following comments:

OHA understands that the applicant intends to install a grassed slope to transition grades from the improved road to existing elevations within the park. As such, OHA comments that this creates the possibility of increased runoff and in different patterns than have previously occurred. This can create additional impacts. OHA inquires as to whether this issue has been addressed or planned for in such ways as filtered drains or spillways to channel the flow in a drainage plan.

OHA sees that this project is quite near the shore and as such would have an effect on the nearshore environment. Without seeing the project plans and list of required permits for this project, OHA generally comments that any project and its potential impacts to State waters must meet the following criteria:

EXHIBIT "D"

Tommy Oi, Land Agent
 Department of Land and Natural Resources
 November 30, 2007
 Page 2

-Anti-degradation policy (Hawai'i Administrative Rules, Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected.

increased runoff

- Designated uses (HAR, Section 11-54-3), as determined by the classification of the receiving State waters.

- Water quality criteria (HAR, Sections 11-54-4 through 11-54-8).

water quality

OHA also notes that the lands which are impacted by this proposed project became a part of the public land trust under section 5(b) of the Admissions Act. As such, they are ceded lands and we request that they be treated with the respect due to them, as they are part of the 1.8 million acres of land that belong to the Hawaiian monarchy and were transferred to the state when Hawai'i became a U.S. state. In addition, OHA urges that future documents refer to this parcel as ceded lands so that their special status is known to others and to facilitate their continued registry and the creation and maintenance of an accurate ceded lands inventory.

public land trust

OHA comments that the applicant intends to remove five trees and replace four of them from within the park. OHA urges that the applicant not simply replace the taken trees with others nearby, thus reducing the total biomass and aesthetic qualities within the park. The applicant should replace the trees with like trees from a nursery or farm. If we allowed all applicants to exhibit such behavior for all projects, the cumulative impacts would soon create a poignant effect for all of us. This is particularly true in this instance as the project occurs within a park and occurs on ceded lands.

(4) replacement of trees

The applicant proposes to temporarily use both ceded and park lands to "facilitate construction staging of materials and equipment, and construction activities, such as earthwork, dewatering, water quality monitoring, demolition and installation of the culvert extension." (See page 3 of application form.) Page four of the application form states that the "Contractor will restore to pre-construction condition." OHA looks forward to seeing this statement come to full fruition and encourages the applicant to not only be diligent in this regard, but to take additional steps in the restoration of this area. OHA feels that this would not be costly and would possibly inspire others to do the same.

EXHIBIT "D"

Tommy Oi, Land Agent
Department of Land and Natural Resources
November 30, 2007
Page 3

Generally, OHA would also like to suggest that the project areas be landscaped with native or indigenous species. Any invasive species should also be removed. Doing so would not only serve as practical water-saving landscaping practices, but also serve to further the traditional Hawaiian concept of mālama 'āina and create a more Hawaiian sense of place. This is particularly true for the removed trees on the proposed slope easement but also true for the proposed temporary use of TMK: 4-1-004: 22.

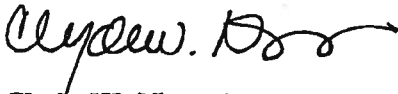
(5) Landscaping

OHA notes that there are cultural sites in the area and as such we request assurance from the applicant that if iwi kūpuna or other cultural deposits are uncovered, work will stop and the applicant will contact the State Historic Preservation Division immediately.

(6) Cultural Site

If you have any further questions or concerns please contact Grant Arnold at (808) 594-0263 or granta@oha.org.

Sincerely,



Clyde W. Nāmu'o
Administrator

C: Kanani Kagawa, Community Resources Coordinator
Office of Hawaiian Affairs, Kaua'i Office
3-3100 Kuhio Hwy. Suite C4
Lihue, Hawai'i 96766-1153

EXHIBIT "D"

LINDA LINGLE
GOVERNOR

HIGHWAY DESIGN BRANCH, ROOM 688A
BRIDGE DESIGN SECTION, ROOM 611
CADASTRAL DESIGN SECTION, ROOM 600
HIGHWAY DESIGN SECTION, ROOM 609
HYDRAULIC DESIGN SECTION, ROOM 636
TECHNICAL DESIGN SERVICE, 688

RIGHT-OF-WAY BRANCH, ROOM 691

TRAFFIC BRANCH, ROOM 602

MOTOR VEHICLE SAFETY OFFICE, ROOM 511



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION AT KAPOLEI

601 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707

BRENNON T. MORIOKA
INTERIM DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI

IN REPLY REFER TO:

JAN 30 2008

HWY-RL
3.85570

TO: MR. THOMAS OI, KAUAI DISTRICT LAND AGENT
DEPARTMENT OF LAND AND NATURAL RESOURCES

FROM: ANGIE NAITO, RIGHT-OF-WAY AGENT *Angie Naito*
HIGHWAYS DIVISION
DEPARTMENT OF TRANSPORTATION

SUBJECT: KUHIO HIGHWAY SHORT TERM IMPROVEMENTS
KUAMOO ROAD TO TEMPORARY BYPASS ROAD
PROJECT NO. NH-056-1(50), (PROJECT)
OFFICE OF HAWAIIAN AFFAIRS' COMMENTS FOR THE SLOPE
EASEMENT AND RIGHT-OF-ENTRY PERMIT, WAILUA, KAUAI,
TMK: (4) 4-1-04-21, 22 AND 24

In response to your facsimile transmittal dated December 27, 2007, requesting resolution for comments imposed by the State of Hawaii, Office of Hawaiian Affairs' (OHA) letter HRD07/3254 dated November 30, 2007, the following are offered as our responses:

1. Increased runoff: The State Department of Transportation's (DOT) consultant, Wilson Okamoto Corporation verified that any increase in runoff due to the Project improvements near the proposed slope easement is negligible.
2. Water Quality: The Project is complying with the State Department of Health, water quality rules and regulations through various permits such as NPDES and 401 Water Quality Certification.
3. Public Land Trust: We have noted these comments and will apply to future project documentation.
4. Relocated Trees: We have noted these comments; our original design intent would be to replace trees with new nursery cultivated landscaping.

EXHIBIT "E"

JAN 30 2008

5. Landscaping: The contractor will replace landscaping that the contractor damages/removes during construction of the Project. The contractor will be told not to plant any invasive species in the Project area.
6. Cultural Sites: We have consulted with the State, Department of Land and Natural Resources, Historic Preservation Division (SHPD) during the plan review and permitting process. The plans and specifications require the contractor to stop work and contact SHPD should archaeological/cultural deposits be uncovered.

We hope this satisfies OHA's concerns. Thank you for your continued cooperation on this Project. If there are any questions, please call me at (808) 692-7333.